



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,147	06/26/2001	Anatole Shamakov	JP920000426US1	2206
39903 7590 07/26/2007 ANTHONY ENGLAND PO Box 5307 AUSTIN, TX 78763-5307			EXAMINER GRAHAM, CLEMENT B	
			ART UNIT 3692	PAPER NUMBER
			MAIL DATE 07/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/892,147

Applicant(s)

SHAMRAKOV, ANATOLE

Examiner

Clement B. Graham

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 5/9/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-7,9,14-17,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-7,9, 14-17, 21-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Claims 4-7, 9, 14-17, 19, 21-22 remained pending.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 12, 21-22, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.  
In particular, Claims 21-22, recites **phrases** ["to store, operable to,"].

However • **Claim limitations that employ phrases of the type**• "Able to be, so as to be Able, Able to be connected, "At the time of" prohibiting any subsequent use of the method" and on the basis of taking into account" **are typical of claim limitations which may not distinguish over prior art. It has been held that the recitation that an element is "adapted to" perform or is capable of" performing a function is not a positive limitation but only requires the ability to so perform** . This language fails to distinctly claim Applicant's invention because the scope of the claim is unclear. Moreover the specification fails to clarify, the meaning of the limitation. Appropriate correction is required.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims Claims 4-7, 9, 14-17, 19, 21-22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Arganbright et al (Hereinafter Arganbright U.S Patent 6, 980, 962 in view of Muyres et al (Hereinafter Muyres U.S Patent 2001/0056405).
6. Claims 4-7, 9, 14-17, 19, 21-22, are rejected under 35 U.S.C. 102(e) as being anticipated by Arganbright et al (Hereinafter Arganbright U.S 6, 587, 838).

As per claim 4, Arganbright discloses wherein second resource planning process comprises a process of an Enterprise Resource Planning application (ERP). (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67) .

As per claim 5, Arganbrighth discloses wherein said first shopping process of a WebSphere Commerce Suite of application. (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 6, Arganbrighth discloses including the step of: executing an application for a banking transaction process on the data center host computer system. (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 7, Arganbrighth discloses wherein said second resource planning process a process of an SAP ERP application . (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 9, Arganbrighth discloses wherein said second integration process comprises a process of an Mq Series of applications. (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 14, Arganbrighth discloses wherein the second resource planning process comprises a process of an Enterprise Resource Planning (ERP) application. (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 15, Arganbrighth discloses wherein said first shopping process of a WebSphere Commerce Suite of applications. (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 16, Arganbrighth discloses including the step of: executing an application for a banking transaction process on the data center host computer system(see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 17, Arganbrighth discloses wherein said second resource planning process a process of an SAP ERP application . (see column 59 lines 56-67 and column

Art Unit: 3692

60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 19, Arganbrighth discloses Wherein said second integration process comprises a process of an MQ Series of applications. (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

As per claim 21, Arganbrighth discloses a method for owing hosting services, comprising the steps of;

a) hosting a plurality of applications on a host computer system at a data center, wherein hosting the applications includes:

executing an application for a first shopping process on the data center host computer system, the first shopping process being accessible to shoppers by Internet communications wherein the first shopping process performs the step of a first hosting service step, the hosting service step including (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67) communicating with a first integration process and a first resource planning process via Internet communications to transact first sales, wherein the first resource planning process is a process of a first resource planning application on a host computer system located remotely from the data center and the first integration process is a process of a first integration application on a host computer system located remotely from the data center(see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67) executing an application for a second resource planning process on the data center host computer system, wherein the second resource planning process performs the step of a second hosting service step, the second hosting service step including: communicating with a production process via Internet or dedicated link communications, wherein the production process is a process of a second production application on a host computer located remotely from the data center (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines

Art Unit: 3692

25-67 and column 20 lines 1-67 and column 21-22 lines 1-67) and executing an application for a second integration process on the data center host computer system, wherein the second integration process performs the steps of a third hosting service step, the third hosting service step including: coupling communications between the fuel shopping process and the second resource planning process to transact second sales; a fourth hosting service step, the fourth hosting service step including: coupling communications between the second resource planning process and a second shopping process, wherein the second shopping process is a process of a second shopping application accessible to shoppers by Internet communications on a host computer located remotely from the data center, the communications between the second resource planning process and the second shopping process being Internet communications to transact third (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67) a fifth hosting service step, the fifth hosting step including, coupling communications between first shopping process and a third resource planning process to transact fourth sales, wherein the third resource planning process is a process of a third resource planning application on a host computer located remotely from the data center; and a sixth hosting service step, the sixth hosting service step including: coupling communications between a certain process and a third shopping process, wherein the third shopping process is a process of a third shopping application accessible to shoppers by Internet communications on a host computer located remotely from the data center and the certain process is a process of a certain application on a host computer located remotely from the data center (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

Arganbright fail to explicitly teach offering to customers a selection of hosting services, wherein the customers may select for the host computer system to perform a

hosting service selected from among the first, second third, fourth, fifth and sixth hosting service steps.

However Muyres discloses 0128] The customers of such a model may include: end users, OEM and system integrators, independent software vendors (ISVs), and advertisers. The end users benefit because, as consumers, they gain high performance and a convenient and compelling shopping experience for both pre-positioned digital content and remote hard-goods (typically, but not necessarily, related to the pre-positioned digital content). The consumer enjoys a focused inventory selection and, for pre-positioned digital content, a highly convenient and nearly instantaneous purchase process regardless of the size of an item. The OEMs and system integrators gain an annuity-style revenue stream by hosting the DCVM 10 on newly built computer systems. The ISVs gain access to significantly increased visibility, particularly during the "peak buy period" for the newly acquired system, with virtually no distribution cost. And the advertisers have a new platform for advertising that has two key values: an upscale directed client base, and detailed data on the end users who see the advertising. The advertiser has a number of options, including a full store presence, banner advertisements, etc. The types of advertisers may include intellectual property providers (IPPs), hardware system and accessory providers, and Internet service providers, among others.(see column 9 para 0128-0129).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Arganbright to include offering to customers a selection of hosting services, wherein the customers may select for the host computer system to perform a hosting service selected from among the first, second third, fourth, fifth and sixth hosting service steps taught by Muyres in order to provide customers the options of selection of services.

As per claim 22, Arganbrighth discloses a hosting system comprising:.  
a host computer system at a data center hosting a plurality of applications, the applications including:  
a first application stored on the hosting system and operable as a fast shopping process executing on the host computer system, the first shopping process being accessible to

Art Unit: 3692

shoppers by Internet communications, the first shopping process further being operable to perform a first hosting service step, wherein the first hosting service step includes (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67)

communicating with a first integration process and a first resource planning process via Internet communications to transact first sales, wherein the first resource planning process is a process of a resource planning application on a host computer system located remotely from the data center and the first integration process is a process of a first integration application on a host computer system located remotely from the data center, a second application stored on the hosting system and operable as a second resource planning process executing on the host computer system, the second resource planning process further being operable to perform a second hosting service step (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67)

wherein the second hosting service step includes:

communicating with a production process via Internet or dedicated link

communications, wherein the production process is a process of a second production application on a host computer located remotely from the data center (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67) and a third application stored on the hosting system and operable as a second integration process executing on the host computer system, the second integration process further being operable to perform a number of hosting service steps including:

a third hosting service step including:

coupling communications between the first shopping process and the second resource planning process to transact second sales (see column 2 lines 4-59 and column 3 lines 25-67 and column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67) a fourth hosting service step including:



coupling communications between the second resource planning process and a second shopping process, wherein the second shopping process is a process of a second shopping application accessible to shoppers by internet communications on a host computer located remotely from the data center, the communications between the second resource planning process and the second shopping process being internet communications to transact third sales(see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67)

a fifth hosting service step including:

coupling communications between the first shopping process and a third resource planning process to transact fourth sales, wherein the third resource planning process is a process of a third resource planning application on a host computer located remotely from the data center;

a sixth hosting service step including:

coupling communications between a certain process and a third shopping process.

wherein the third shopping process is a process of a third shopping application accessible to shoppers by Internet communications on a host computer located remotely from the data center and the certain process is a process of a certain application on a host computer located remotely from the data center (see column 59 lines 56-67 and column 60 lines 1-67 and column 23 lines 25-38 and column 19 lines 25-67 and column 20 lines 1-67 and column 21-22 lines 1-67).

Arganbrigh fail to explicitly teach wherein the host computer system is operable to offer to customers a selection of hosting services, such that the customers may select for the host computer system to-perform one or-more of the first, second third, fourth, fifth and sixth hosting service steps.

However Muyres discloses 0128] The customers of such a model may include: end users, OEM and system integrators, independent software vendors (ISVs), and advertisers. The end users benefit because, as consumers, they gain high performance and a convenient and compelling shopping experience for both pre-positioned digital content and remote hard-goods (typically, but not necessarily, related to the pre-

positioned digital content). The consumer enjoys a focused inventory selection and, for pre-positioned digital content, a highly convenient and nearly instantaneous purchase process regardless of the size of an item. The OEMs and system integrators gain an annuity-style revenue stream by hosting the DCVM 10 on newly built computer systems. The ISVs gain access to significantly increased visibility, particularly during the "peak buy period" for the newly acquired system, with virtually no distribution cost. And the advertisers have a new platform for advertising that has two key values: an upscale directed client base, and detailed data on the end users who see the advertising. The advertiser has a number of options, including a full store presence, banner advertisements, etc. The types of advertisers may include intellectual property providers (IPPs), hardware system and accessory providers, and Internet service providers, among others.(see column 9 para 0128-0129).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Arganbright to include wherein the host computer system is operable to offer to customers a selection of hosting services, such that the customers may select for the host computer system to-perform one or more of the first, second third, fourth, filth and sixth hosting service stepstaught by Muyres in order to provide customers the options of selection of services.

### **Conclusion**

### **RESPONSE TO ARGUMENTS**

7. Applicant's arguments filed 5/9/2007 has been fully considered but they are moot in view of new grounds of rejections.
8. It is Applicant's is responsibility to read the prior art of record in its entirety.
9. Applicant's claims 21, 22, states "planning a process via Internet communication to transact sales, second and third sales" wherein the customers may select for the hostcomputer"

However the subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does

not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use, (B) "adapted to" or "adapted for" clauses,
- (C) "wherein" clauses, or
- (D) "whereby" clauses.

This list of examples is not intended to be exhaustive. See also MPEP § 2111.04.

**\*\*>**USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous.

Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process."<

Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings."). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from

Art Unit: 3692

common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 703-308-0505. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0040 for regular communications and 703-305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CG

July 15, 2007

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
*All 3692*